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ALEXANDER L. STEVAS,
CLERK

No. 83-636

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

DAVID BATTISTI,

Petitioner

v.

UNITED STATES OF AMERICA

SUPPLEMENTAL APPENDIX

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

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OF COUNSEL:
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IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Crim. 82-00140-2

UNITED STATES OF AMERICA

v.

DAVID BATTISTI

JUDGMENT AND PROBATION/COMMITMENT ORDER

(O)n this date, November 8, 1982 ... (t)here being a verdict of guilty. Defendant has been convicted as charged of the offenses of conspiracy to transmit wager information; aiding and abetting; use of interstate facility (telephone) in aid of racketeering enterprise gambling business in violation of 18 U.S.C. §371; §1084; §2; §1952(a)(3) ... The defendant is hereby committed to the custody of the Attorney

General or his authorized representative for imprisonment for a period of one (1) year and one (1) day plus a fine of Ten Thousand ($10,000) Dollars to be paid within 30 days under Count 1. Under Count 2, the defendant is committed to the custody of the Attorney General ... for a period of one (1) year and one (1) day to run concurrently with the sentence imposed under Count 1. Under Count 3, the imposition of a prison sentence is suspended and the defendant is placed on probation for a period of five (5) years to run consecutively with the sentences imposed under Counts 1 and 2.

/s/ DANIEL H. HUYETT, 3rd
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1756

UNITED STATES OF AMERICA

v.

DAVID BATTISTI,
a/k/a Davey Crickett

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Crim. No. 82-00140-2)
(Honorable Daniel H. Huyett, 3rd)

Argued July 19, 1983

Before: Adams and Higginbotham, Circuit Judges, and Teitelbaum, District Judge*

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* Honorable Hubert I. Teitelbaum, United States District Court for the Western District of Pennsylvania, sitting by designation.

JUDGMENT ORDER

After considering all contentions raised by appellant, namely, that (I) evidence is lacking to establish a violation of 18 U.S.C. §§1084, 1952 and 1955, where the indictment charges a "sports bookmaking" operation as a factual predicate, when the evidence establishes only that the accused was a bettor; (II) the charge of the Court failed to provide a definition of "bookmaking" to enable the jury to distinguish a bookmaker from a bettor; (III) fairness is lacking when the Government capriciously refuses to allow the results of a polygraph examination to be admitted and considered at sentencing; and (IV) a prior criminal conviction of the accused was admitted improperly for impeachment where its similarity to certain evidence would cause prejuice, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

/s/ ARLIN M. ADAMS
Circuit Judge

ATTEST

/s/ SALLY MRVOS
Sally Mrvos, Clerk

Dated: July 26, 1983

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1756

UNITED STATES OF AMERICA

v.

DAVID BATTISTI,
Appellant

(Crim. No. 82-00140-2)

ORDER
SUR PETITION FOR REHEARING EN BANC

Present: Seitz, Chief Judge, Aldisert, Adams, Gibbons, Hunter, Weis, Garth, Higginbotham, Sloviter, Becker, Circuit Judges, and Teitelbaum, District Judge*

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* As to panel rehearing only

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all other available circuit judges in the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ ARLIN M. ADAMS
Arlin M. Adams
Circuit Judge

Dated: August 18, 1983